Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of:	)	
	)	
Implementation of Section 17	)	ET Docket 93-7
of the Cable Television	)	
Consumer Protection and	)	
Competition Act of 1992	)	
	)	
Compatibility Between	)	
Cable Systems and Consumer	)	
Electronics Equipment	)	

REPLY COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

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February 9, 1994

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REPLY COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

1. The Cable Telecommunications Association, Inc., ("CATA"), hereby files reply comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these reply comments on behalf of its members who will be directly affected by the Commission's action.

2. With the exception of filings by several telephone companies and the New York City Department of Telecommunications and Energy, there is significant unanimity in the comments submitted in this Docket. Virtually everyone has embraced the Commission's basic regulatory scheme.

Virtually everyone has disagreed with the Commission's proposals to require cable operators to provide decoder interface devices without charge for either installation or use, to prohibit scrambling of basic tier services without, at least, an announced willingness to entertain waiver requests under specified circumstances, and to require cable operators to provide various levels of information concerning the market availability of remote control devices. These issues demand continued examination.

3. Charges for Decoder Interface Devices. As should be clear from the comments, the Commission has failed to provide a satisfactory reason for proposing not to permit the recovery of costs for the installation and use of decoder interface devices. In its Report to the Congress, the Commission advanced the notion that charges should not be permitted because these devices would not be intended for sale, and because their function would be related only to cable security. The City of New York has dutifully echoed these arguments. Significantly, they seem to have been abandoned in the Notice - and for good reason. First, to base a decision on whether a descrambling device is offered for sale is disingenuous because, by definition, a descrambling device is never offered for sale - to the general public. "Pirate decoders" are illegal. Moreover, in its proposals for a short term solution to the compatibility problem, the Commission proposes to continue to allow systems to charge for the use of

converters and converter/descrambling devices even though the latter are never offered for sale to the general public. Thus, whether there is a market for specific devices can not be determinative.

4. The argument that the cable operator not be permitted to charge for the use of decoder interface devices because they are related to system security - or as the City of New York argues, because the need for the devices would be created by the cable system's decision to scramble signals - is also misplaced. There simply can be no dispute over the right of a system to protect programming. Section 17 of the Act makes this clear. It was not the intent of the Congress to penalize the cable industry for pursuing the business of signal delivery, but merely to achieve compatibility between industries whose businesses have taken them down diverging technological paths. That most systems have chosen scrambling as a protective measure is, as the Commission itself has recognized, because other methods, are not suitable in most cases. For this reason, the Commission's latest argument, that not permitting charges for decoder interface devices will create an incentive to use "in the clear" technologies, is particularly frustrating, and can only be characterized as administrative wishful thinking.

5. Even more perplexing is the Commission's notion that the free provision of decoder interface devices will create an

incentive for people to buy "cable ready" television receivers and VCRs. The Notice, as worded, indicates that the proposed "cable ready" rules will apply to all receivers. If this is the case, consumers will hardly need an incentive, since they will have no choice. If the Commission does not intend its rules to apply to all receivers, then surely the fact that decoder interface devices will cost subscribers less each month is enough of an incentive to buy the receivers that are "cable ready."

6. Availability of Remote Control Devices. CATA subscribes to the view put forward by most commenters that it is highly unrealistic to require cable operators not only to identify models of remote control devices compatible with system equipment, but also to list the sources from which these devices can be obtained. Time Warner correctly notes that the Act requires only that cable operators inform subscribers of the "types" of remote control units compatible with their converters. This information will be of more value to consumers than a long list of devices and sources that sell them. Even the City of New York points out the futility of requiring a cable operator to canvass stores in order to compile a list that will be out of date the day it is published. It is one thing to inform the public of the fact that various types of remote devices are available. It is quite another to attempt to act as a clearing house of merchandising information. At some point, members of the public can be expected to bear at least the minimal

responsibility for choosing one of many stores that sell what they want. The cable operator should not have to act as some middleman between the consumer who is disappointed with a device that does not operate as advertized, and an irate store owner whose business was inadvertently left off a list. The Commission's proposal is overly burdensome, with little redeeming benefit.

7. Scrambling of Basic Service. The Commission has now learned that there are some systems that do, in fact, at considerable expense, scramble basic service in order to combat particularly severe theft-of-service problems. The Commission's proposal to prohibit this practice would work a considerable hardship on such systems and their subscribers. These systems, at least, should be grandfathered if the Commission chooses to adopt the scrambling restriction. A better course, as CATA has suggested, is not to adopt the restriction at all. By its very proposal, the Commission has made it clear that it deems scrambling of basic services to be undesirable. Very few systems engage in the practice now. It is hardly likely that, given the Commission's sentiments, there will be a rush to scramble. Thus, there is very little reason for the Commission to adopt a rule prohibiting the scrambling of basic service. Such a rule, if adopted now, will already be destined to fall victim to paperwork reduction in the future.

8. Conclusion. CATA urges the Commission to continue to be guided by the recommendations of the Cable-Consumer Electronics Compatibility Advisory Group, and to pay heed to the comments filed in this proceeding. We believe the Commission has now been made aware of the unnecessary burdens that might be imposed by several of its proposals. This Docket should continue to be a straightforward attempt to comply with the Congressional goal of achieving compatibility. It is not a disciplinary proceeding. Costs for compliance with compatibility requirements must be recoverable in a manner that complies with the Cable Act and does not force cable systems to contemplate cost-of-service filings. Smaller cable systems, in particular, cannot be expected to provide equipment without cost and do not have the financial ability, much less the inclination, to participate in complicated administrative processes that would justify across the board rate increases for benefits enjoyed by a few. Similarly, systems, particularly small systems, cannot be expected to publish merchandising guides in aid of enabling consumers to shop for remote control devices. The burden of such a requirement would be significant, the benefit, minimal. Finally, the Commission should re-think its proposal to ban basic tier scrambling. It is unnecessary for the vast majority of systems, but for systems with a real need to scramble, such a regulation would work great hardship.

9. The cable industry stands ready to cooperate with the Commission in its efforts to insure compatibility. As the Commission has recognized, significant progress has already been made. With the exception of the issues noted above, CATA believes that the Commission has proceeded in a commendable fashion. Compatibility can be achieved. The Congressional mandate can be satisfied. Undue burdens can be avoided.

Respectfully submitted,

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